

Dr. Jyoti Hyankey Vs Union Public Service Commission

Court: Delhi High Court

Date of Decision: July 17, 2013

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Praveen Kr. Singh and Mr. Safiullah, for the Appellant; Naresh Kaushik, Ms. Aditi Gupta and Mr. Vardhman Kaushik, Advocates for R-1, Mr. Arjun Pant, Advocate for R-2 and Dr. Sunita R-3 in person, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

An advertisement was published in the Employment News dated 22-28 March, 2008 which was issued by the

Union Public Service Commission on behalf of the Directorate of Indian Systems of Medicine and Homeopathy, Government of NCT, Delhi

inviting applications from eligible candidates to be appointed as Medical Officer (Homeopathy). Four posts, with which we are concerned, were

shown as reserved for members belonging to notified Scheduled Tribes. The writ petitioner applied and cleared the written examination. Since she

had applied as a Scheduled Tribe candidate indicating in the application form that she was a member of "Bhootia" tribe, when UPSC sent the

Detailed Application Form to be filled up and sent to UPSC before she was interviewed, the petitioner did so; and as required by the instructions

issued in the Detailed Application Form she obtained from the competent authority a certificate purporting to certify that she belonged to the

"Bhootia" tribe. The certificate bears No. 3402/2004 and is dated December 30, 2004. It is this certificate which is the bone of contention

between the parties.

2. It is not in dispute that the Detailed Application Form sent to the petitioner contained exhaustive instructions, including the form of the certificate

including language thereof, which was required to be furnished. The following was indicated:-

(A) The form of certificate to be produced by Scheduled Castes and Scheduled Tribes candidates applying for appointment to posts under the

Government of India.

This is to certify that Shri/Shrimati/Kumar.....son/daughter of.....Of village/townin District/Division..... of the State/Union

Territory.....belongs to the caste/tribe which is recognized as a Schedule Caste/Schedule Tribe under:-

the Constitution (Scheduled Castes) Order, 1950 @

the Constitution (Scheduled Tribes) Order, 1950@

the Constitution (Scheduled Castes) Union Territories Order, 1951@

the Constitution (Scheduled Tribes) Union Territories Order, 1951@

(as amended by the Scheduled Castes and Scheduled Tribes List (Modification) Order, 1956, the Bombay Reorganization Act, 1960, the Punjab

Reorganisation Act, 1966, the State of Himachal Pradesh Act, 1970, the North Eastern Areas (Reorganisation) Act, 1971 and the Scheduled

Castes and Scheduled Tribes Order (Amendment) Act, 1976, the State of Mizoram Act, 1986, the State of Arunachal Pradesh Act, 1986 and the

Goa, Daman & Diu (Reorganization) Act, 1987) the Constitution (Jammu and Kashmir) Scheduled Castes order, 1955@)

the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 as amended by the Scheduled Castes and Scheduled Tribes

Order (Amendment) Act, 1976 @

the Constitution (Dadar and Nagar Haveli) Scheduled Castes order, 1962 @

the Constitution (Dadar and Nagar Haveli) Scheduled Castes Order, 1962 the Constitution (Pondicherry) Scheduled Castes Order, 1964@

the Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967@ the Constitution (Goa, Daman and Diu) Scheduled Castes Order, 1968@

the Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 the Constitution (Nagaland) Scheduled Tribes Order, 1970@

the Constitution (Sikkim) Scheduled Castes Order, 1978@

the Constitution (Sikkim) Scheduled Castes Order, 1978, the Constitution (Sikkim) Scheduled Castes Order, 1978, the Constitution (Jammu and

Kashmir) Scheduled Tribes Order, 1989 @

the Constitution (SC) Order (Amendment) Act, 1990@

the Constitution (ST) Order (Amendment) Act, 1991@

the Constitution (ST) Order (Second Amendment) Act, 1991@

the Constitution (Scheduled Castes) Order (Amendment) Act, 1991 the Constitution (Scheduled Castes) Order (Amendment) Act, 2002 @

the Constitution Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002@

the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002@ %2. Application in the case of Schedule Castes/Scheduled Tribes

persons who have migrated from one State/Union Territory Administration to another.

This certificate is issued on the basis of the Scheduled Castes/Scheduled Tribes certificate issued to Shri/Shrimati..... father/mother of

Shri/Shrimati/Kumariof village/townin District/Division.....of the State/Union Territory.....who belongs to the..... caste/tribe which is

recognized as a Scheduled Castes/Scheduled Tribe in the State/Union Territory of.....issued by the

Dated.....

%3 Shri/Shrimati/Kumari.....and/or his/her family ordinarily reside(s) in village/town of..... District/Division of the State/Union Territory

of.....

Signature.....

Designation

with seal of office)

State/Union Territory

3. The certificate filed by the petitioner which she had obtained from the office of the District Magistrate Dharchula is in Hindi and its translation

reads as under:-

This is to certify that Km. Jyoti Hyankey d/o Shri Dharam Singh resident of village Sosa, Tehsil Dharchula, District Pithoragarh belongs to Bhootia

community of Uttranchal as per Constitution Schedule Tribe Order, 1950 as amended from time to time/Constitution Uttranchal Scheduled Tribe

Order 1967.

Km. Jyoti Hyankey and her family are ordinarily residents of village Sosa Tehsil Dharchula District Pithoragarh.

4. The controversy pertaining to the certificate in question is that the words "Constitution Schedule Tribe Order, 1950" have been scored off by

drawing a lateral line across the said words followed by a line at an incline of 45 degrees scoring of the words "as amended from time to

time/Constitution Uttranchal Scheduled Tribe Order 1967".

5. UPSC took the view that firstly the certificate in question does not indicate as to in respect of which notification the Bhootia Tribe in the State of

Uttranchal was declared a Scheduled Tribe. Secondly, that assuming the line at an incline of 45 degrees scoring of the words "as amended from

time to time/Constitution Uttranchal Scheduled Tribe Order 1967" is to be ignored, the certificate would mean that the issuing authority has certify

petitioner to be belonging to a Scheduled Tribe under the Constitution Uttranchal Schedule Tribe Order, 1967. Now, the State of Uttranchal was

not even in existence in the said year i.e. 1967.

6. The problem which the petitioner faced is that the District Magistrate in District Pithoragarh, while getting printed the proforma certificates, has

lost sight of the fact that in the year 1967 the State of Uttaranchal was not in existence. The entire area constituting the current State of Uttarakhand,

earlier named as Uttaranchal, was a part of the State of Uttar Pradesh till when the State of Uttaranchal was carved out on November 09, 2000.

Thus, it would be an ex-facie wrong certificate which records that a person has been issued a certificate certifying the person to be a member of a

Scheduled Tribe listed in a Notification issued in the year 1967 pertaining to State of Uttaranchal.

7. What has happened is this. The Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967 was promulgated and members of Bhootia tribe in

the State of Uttar Pradesh residing in the hill areas including District Pithoragarh were included as members of a Scheduled Tribe. Thus, the

certificate which had to be issued ought to have made a reference to the Constitution (Uttar Pradesh) Scheduled Tribe Order, 1967.

8. We agree with the view taken by the Tribunal that certificates obtained by persons claiming benefit of reservation must strictly conform to the

requirement of Union Public Service Commission and especially when the formats of the Certificates are made known to the candidates. The

reason is that Union Public Service Commission conducts hundreds of selections to thousands of posts each year and receives applications from

millions. It is humanly not possible for the staff of the Commission to go about verifying the correctness of the contents of the certificates. It may be

true that any intelligent person, upon seeing the certificate submitted by the petitioner, would not treat the words scored off with a line at a 45

degrees angle because the line appears to have been inadvertently put on the certificate by somebody who was probably authenticating a

photocopy thereof with a pen in hand and inadvertently scored off the words "as amended from time to time/Constitution Uttaranchal Scheduled

Tribe Order 1967", probably while comparing the language of the photocopy and the original. Further, with use of some intelligence and a person

knowing some history pertaining to the State of Uttaranchal being carved out from the erstwhile State of Uttar Pradesh on November 09, 2000

would infer that there could not be a Presidential Notification issued in the year 1967 pertaining to the State of Uttaranchal. Such a person having

knowledge as aforementioned and some sense of prudence could have guessed that the correct notification to be looked at would be the Constitution

(Uttar Pradesh) Scheduled Tribe Order, 1967.

9. But alas, the bureaucrat has to be bureaucratic and has to live by the letter of law and not the spirit thereof. Fortunately in the instant case, such

a bureaucrat has the backing of the law which states that if law mandates something to be done in a particular manner it has to be done in the

manner prescribed and none else.

10. The reason for the aforesaid legal principle is, and we illustrate with reference to the facts of the instance case: from time to time Presidential

Notifications have been issued listing Scheduled Castes and Scheduled Tribes in various States in India. These Notifications have been amended

from time to time. Thousands of castes have been notified as Scheduled Castes and hundreds of tribes have been notified as Scheduled Tribes.

Thus, administrative convenience would warrant that SC/ST Certificates clearly list the Presidential Notification notifying the Castes or the Tribe as

the case may be as a Scheduled Castes or a Scheduled Tribe.

11. It may appear technical if looked from the point of view of the petitioner but the reasoning makes logical sense if considered from the point of

view of administrative convenience and interest of the applicants and the public because strict insistence upon the language of the certificates would

quicken the scrutiny of the documents submitted by persons and this would mean a quick ending to a selection process which would be not only

beneficial to the candidates but even to the public at large because it would be in public interest that public posts are not kept vacant and are filled

up at the earliest.

12. We would advise the authorities in the State of Uttrakhand to take cognizance of our present decision and therefore we direct the Registry to

send a certify copy thereof to the Chief Secretary, State of Uttrakhand, Dehradun, State of Uttrakhand so that instructions can be issued to all

District Magistrates in the States to correct the proforma of the certificates printed by them.

13. The writ petition is dismissed. No costs.